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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

KUANG-BAO P. OU-YOUNG,

Plaintiff,

v.

LAWRENCE E. STONE, Santa Clara
County Assessor; JEANETTE TONINI,
Senior Assessment Clerk; and COUNTY OF
SANTA CLARA,

Defendants.

Case No. 19-cv-07000-BLF

**ORDER DENYING PLAINTIFF'S
MOTION TO REMAND**

[Re: ECF 16]

Plaintiff Kuang-Bao P. Ou-Young filed this action in the Santa Clara County Superior Court on October 17, 2019, asserting claims against Defendants Lawrence E. Stone, Santa Clara County Assessor ("Stone"); Jeanette Tonini, Senior Assessment Clerk ("Tonini"); the County of Santa Clara ("the County"); and District Judge Edward J. Davila ("Judge Davila"). *See* Notice of Removal Exh. 4 (Complaint), ECF 1-4. United States removed the action to federal district court on behalf of Judge Davila. *See* Notice of Removal, ECF 1. Plaintiff moves to remand the action to the state court.

Plaintiff's motion is without merit. The United States removed the action pursuant to U.S.C. § 1442(a)(3), which provides for removal of state court actions asserted against "[a]ny officer of the courts of the United States, for or relating to any act under color of office or in the performance of his duties." *See* Notice of Removal, Case No. 19-cv-07000-BLF, ECF 1.

1 Plaintiff's claims against Judge Davila arise from Judge Davila's performance of his judicial
2 duties with respect to a case assigned to him. *See* Notice of Removal Exh. 4 (Complaint) at 2-3,
3 ECF 1-4. Thus, removal was proper.

4 Plaintiff argues that the United States should not have removed the action because it
5 should have known that the complaint failed to state a claim against Judge Davila. Plaintiff cites
6 no authority in support of that argument.

7 Moreover, as the County and Stone point out, Plaintiff alleges a federal constitutional
8 claim. "The district courts shall have original jurisdiction of all civil actions arising under the
9 Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. Plaintiff alleges a claim
10 for "Unreasonable Seizures" in violation of the Fourth Amendment to the United States
11 Constitution. *See* Notice of Removal Exh. 4 (Complaint) at 2-3, ECF 1-4. Because it has original
12 jurisdiction over Plaintiff's claims, the Court retains jurisdiction after dismissing Judge Davila.

13 The motion to remand is DENIED.¹

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15 Dated: December 5, 2019



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17 BETH LABSON FREEMAN
18 United States District Judge

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27 ¹ The County and Stone ask the Court to dismiss the present action as duplicative of another action
28 pending before the undersigned, *Ou-Young v. Lawrence Stone, et al.*, Case No. 19-cv-07231-BLF.
An opposition brief is not an appropriate procedural vehicle to seek dismissal of an action, and
thus the request for dismissal has not been considered.